

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WILLIAM HAYES
Plaintiff,

v.

TEXAS WESTMORELAND COAL CO.,
WESTMORELAND COAL CO., AND
WESTMORELAND RESOURCE
PARTNERS L.P.,
Defendants

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No. 6:17-cv-198

AFFIDAVIT IN SUPPORT OF
DEFENDANTS' NOTICE OF REMOVAL

STATE OF COLORADO

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§
§

COUNTY OF DOUGLAS

BEFORE ME, the undersigned authority, personally appeared Jennifer Grafton, who being by me first duly sworn, on oath, stated as follows:

"My name is Jennifer Grafton. I am over 18 years of age, of sound mind, and am competent to make this Affidavit. I am Chief Legal Officer, Chief Administrative Officer, and Secretary with Westmoreland Coal Company, who is majority owner of Westmoreland Resource Partners, L.P. and in that capacity have come to know the facts stated in this affidavit, which are within my personal knowledge and are true and correct.

Defendants in this case, Westmoreland Coal Co., Texas Westmoreland Coal Co., and Westmoreland Resource Partners L.P. are related but distinct entities, with distinct purposes and operations.

Westmoreland Coal Co. is a corporation, organized and existing under the laws of the State of Delaware, with its principal office in Englewood Colorado, making it a citizen of Colorado. True and correct copies of publicly available information from the Delaware Department of State: Division of Corporations and the Colorado Secretary of State's website confirming this situs of incorporation and location of Westmoreland Coal Co.'s principal place of business are attached to this affidavit as Exhibit 1.

Texas Westmoreland Coal Co., is a corporation, organized and existing under the laws of the State of Montana, with its principal office in Englewood, Colorado. True and correct copies of publicly available information from the Montana Secretary of State's website confirming this situs of incorporation and location of Texas Westmoreland Coal Co.'s principal place of business is attached as Exhibit 2.

Westmoreland Resource Partners L.P., is a limited partnership. Westmoreland Resource Partners L.P. does not and has never done business in the State of Texas. Westmoreland Resource Partners L.P.'s operations are solely in Ohio and Wyoming. Westmoreland Resource Partners L.P. does not own any portion of Texas Westmoreland Coal Co., does not direct Texas Westmoreland Coal Co.'s operations and, in particular does not direct its staffing operations or use of personnel, and was not a party to any contract by which the services of Plaintiff William Hayes were retained or by which Hayes performed any work or provided any services relevant to this case.

Westmoreland Resource Partners L.P. never directed any work by Hayes, and never received any benefit of any work by Hayes. Westmoreland Resource Partners L.P. has absolutely no relationship with Plaintiff William Hayes, whether as an employee, independent contractor, or otherwise. As demonstrated by the contract attached to this affidavit, Texas Westmoreland Coal Co. contracted with Flexsource LLC for staffing services and it was under this contract that Flexsource provided Hayes to work for Texas Westmoreland Coal Co. The copy of the contract attached to this affidavit is a true and correct copy of the contract with Flexsource LLC.

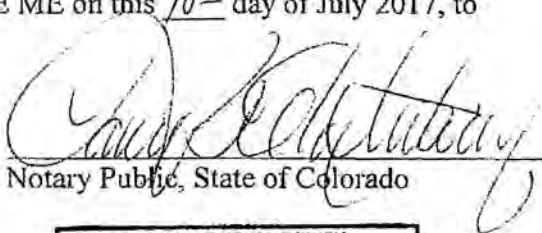
Defendant Westmoreland Coal Company was the first to be served in this case, having been served on June 23rd, 2017. Defendants' notice of removal is thus filed within 30 day of service of a pleading stating a removable claim."

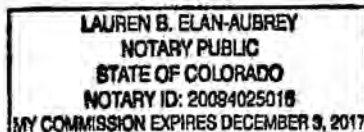
By: 

JENNIFER GRAFTON, SECRETARY

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of July 2017, to certify which witness my hand and seal of office.

12/3/2017
My Commission Expires:


Notary Public, State of Colorado



ONLINE SERVICES

View Business Details

WESTMORELAND COAL COMPANY (F068439), Foreign Profit Corporation

If you want to maintain this entity you need to be [logged in](#) and have authority over the company

General Details Shares Documents History Details

Name in State or Country of Jurisdiction	WESTMORELAND COAL COMPANY
Entity Status	Active Good Standing
Business Identifier	F068439
Entity Type	Foreign Profit Corporation
Corporate Type	General For Profit Corporation
Qualification Date	02/21/2013
Last AR Filed Date	04/07/2017

State or Country of Jurisdiction

Country	United States
State	Delaware
Date Registered in State or Country of Jurisdiction	05/04/1910
Using Known In Montana	No
Period of Duration	Perpetual

Registered Agent in Montana

Agent Name

Entity Name	<u>NATIONAL CORPORATE RESEARCH LTD</u>
Street Address	302 N LAST CHANCE GULCH #403, HELENA, Montana, 59601, United States
Email Address	[Not Provided]
Registered Agent Type	Commercial

Business Mailing Address of Principal Office

Postal Address	9540 SOUTH MAROON CIR STE 300, ENGLEWOOD, Colorado, 80112, United States
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Department of State: Division of Corporations

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<u>File Number:</u>	24033	<u>Incorporation Date /</u>	5/4/1910
		<u>Formation Date:</u>	(mm/dd/yyyy)
<u>Entity Name:</u>	WESTMORELAND COAL COMPANY		
<u>Entity Kind:</u>	Corporation	<u>Entity Type:</u>	General
<u>Residency:</u>	Domestic	State:	DELAWARE

REGISTERED AGENT INFORMATION

Name:	COGENCY GLOBAL INC.		
Address:	850 NEW BURTON ROAD SUITE 201		
City:	DOVER	County:	Kent
State:	DE	Postal Code:	19904
Phone:	302-734-1450		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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TEXAS WESTMORELAND COAL CO. (D033620), Domestic Profit Corporation

If you want to maintain this entity you need to be logged in and have authority over the company.

[General Details](#) [Shares](#) [Documents](#) [History Details](#)

Entity Name TEXAS WESTMORELAND COAL CO

[▶ Show Name History](#)

Entity Status Active Good Standing

Business Identifier D033620

Entity Type Domestic Profit Corporation

Corporate Type General For Profit Corporation

Formation Date 02/28/1968

Last AR Filed Date 04/07/2017

State or Country of Jurisdiction

Country United States

State Montana

Registered Agent in Montana

Agent Name

Entity Name NATIONAL CORPORATE RESEARCH LTD

Street Address 302 N LAST CHANCE GULCH #403, HELENA, Montana, 59601, United States

Email Address [Not Provided]

Registered Agent Type Commercial

Business Mailing Address of Principal Office

Postal Address 302 N LAST CHANCE GULCH #403, Helena, Montana, 59601 United States

Physical Address 9540 SOUTH MAROON CIRCLE STE 300, Englewood, Colorado, 80112, United States

Term Perpetual

Purpose MINING-GENERAL

EXHIBIT**2**

CONTRACT DATE
7-20-09



CONTRACT

BETWEEN

TEXAS WESTMORELAND COAL CO.

AND

FLEX SOURCE, LLC

FOR

CONTRACT LABOR SERVICES

CONTRACT NO. # 31325



Contract # 31325

Jewett Operations
General Contract
Revised Jan 1992

CONTRACT

THIS AGREEMENT, made this 20th day of July, 2009 by and between **FLEX SOURCE, LLC**, 415 N. Center St., Suite 4, Longview, TX 75601 (hereinafter called the Contractor), and **TEXAS WESTMORELAND COAL CO.**, a Montana corporation, having its registered office and principal place of business at 2 North Cascade Avenue, Colorado Springs, CO 80903, and its Texas operations at P.O. Box 915, Jewett, Texas 75846 (hereinafter called the Company):

WITNESSETH:

In consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. WORK TO BE PERFORMED: The Contractor agrees to perform the following work:

CONTRACT LABOR SERVICES

The work shall consist of providing contract labor to the Jewett Mine as further described in "Exhibit A" and in documents referenced in "Exhibit A" (collective described as the "Work"). The services, labor, material and other items to be furnished by Contractor in the performance of the Work are described in more detail in "Exhibit A".

2. CHANGES IN THE WORK: The Contractor shall make without delay any and all changes in the Work from the instructions provided by the Company which are ordered by the Company. If such change causes an increase or decrease in the Work or materials to be provided under this contract or in the amount of time required for its performance, then an equitable adjustment shall be made in the contract price and in the time of completion and the contract shall be modified accordingly in writing. Except as provided in this paragraph, no charge for any extra work or materials will be allowed unless agreed to in writing in advance. Change Orders will be substantially in the form attached as "Exhibit E". If the Company determines that no change in the Work is justified, then no adjustment shall be made to the contract price.

The terms of this Contract shall govern all changes in the Work except as specifically provided and the written change order shall be governed by the terms and conditions of this Contract.

3. RIGHTS OF ACCESS: The Company will obtain all necessary rights of access to lands involved. The Company will obtain permission for any temporary use of the land of others not covered by such a right of access. Contractor shall not enter upon any land for the first time until the Company has notified the tenant or owner of the type of work to be performed and frequency and duration of access.

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4. PLANS AND SPECIFICATIONS: All the work to be performed shall be done in accordance with the plans, dimensions, and specifications furnished by the Company.

The Company will make all necessary surveys and locations and will obtain all access rights required for the completion of said work.

5. TIME: The Contractor shall commence work not later than January 1, 2010 and shall complete said work not later than December 31, 2011. Time is of the essence.

Provided, however, that if the completion of this contract is delayed by (a) the Company, (b) strikes, (c) acts of God, or (d) casualty beyond the control of Contractor, then and in such event the time of completion of this contract shall be extended by Change Order for such additional time within which to complete the performance of the contract to the extent made necessary for such delay, and the Contractor shall give the Company written notice setting forth the reasons and justification for such additional time claimed under this paragraph and the Company shall reasonably act upon such request. Failure on the part of the Contractor to give the Company such notice shall constitute a waiver of any right of the Contractor to extend time of completion as a result of a delay. The work shall be complete upon final inspection and acceptance of the work by the Company and receipt of a final invoice for payment. Use of a portion or portions of the work shall not constitute acceptance of non-conforming or defective work. Acceptance of the Work shall not preclude a later rejection of the Work for a previously undiscovered defect or nonconformity or limit the warranty hereunder.

6. MATERIALS, EQUIPMENT AND LABOR: The Contractor undertakes and agrees to furnish and pay for all work, equipment, supplies, tools, labor, transportation and supervision necessary to perform the Work as described herein and as may be hereinafter changed. Payrolls shall be paid regularly when due and the Contractor shall not permit any lien to attach to any part of the Work or property of the Company, its lessors, or NRG Texas Power LLC.

7. STORAGE OF MATERIALS: All materials purchased by the Contractor for performance of work under this Contract shall be delivered to and stored at the site of the work in such area or areas as may be approved in writing by the Company. Any materials to be furnished by the Company will be delivered to the Contractor at the Company's warehouse for delivery by the Contractor to the Contractor's jobsite. The Contractor shall account for any materials provided by the Company and shall return any unused materials to the Company upon completion or termination of this Contract.

8. LIENS AND LIEN RELEASES: To the fullest extent permitted by law, Contractor waives any and all statutory or constitutional liens to which the Contractor may be entitled to secure payment for labor performed or materials furnished. As requested, Contractor will execute and include with all applications for payments (or invoices) a lien release in the form of "Exhibit H". Contractor will furnish a final release upon final payment as provided in paragraph 16.

9. QUALITY AND WARRANTY: Contractor and Contractor's vendors, suppliers and subcontractors shall perform the Work (or provide services or materials for the Work) in accordance with sound, prudent, and workmanlike industry practices. The Contractor warrants to

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the Owner that the materials and equipment furnished under this contract will be new and of good quality, that the Work will conform with the requirements of this contract, and that for a period of one year from date of completion of this Contract the Work will be free from defects and suitable for its intended purpose. Work not conforming to the requirements of this Contract, including substitutions not properly approved and authorized, may be considered defective by the Company. This warranty shall survive any inspection, delivery, acceptance, or payment by the Company.

10. PATENTS AND SIMILAR RIGHTS: The Contractor agrees to hold the Company harmless, assume the defense, and fully protect the Company from any costs, expenses, or judgment in any suit or action arising from a claim that the material or equipment covered by this contract, or Contractor's or the Company's use thereof, constitutes an infringement of patent or any other proprietary rights.

11. INDEPENDENT CONTRACTOR: It is agreed that in the performance of the Work herein specified, the Contractor is an independent contractor, responsible to the Company only as to the results to be obtained in the Work herein specified, and for the performance of the Work in accordance with the contract documents. Contractor shall be solely responsible for selecting and implementing the means, methods, techniques and procedures to perform its duties hereunder subject to and in accordance with the contract documents.

12. EMPLOYEES OF CONTRACTOR: All labor provided under this contract shall be employees of the Contractor. The Contractor shall provide qualified personnel to perform the Work who are satisfactory to the Company. The Company specifically reserves the right to reject and require replacement of the Contractor's supervisory or other personnel responsible for prosecution of the Work with or without cause. Contractor shall be responsible for payroll, income tax withholding, unemployment insurance, worker's compensation insurance and all other requirements of law governing the relationship between employee and employer.

13. LAWS AND REGULATIONS: The Work shall be compatible with the guidelines, requirements and regulations promulgated under the Texas Surface Coal Mining and Reclamation Act (Title 4, Chapter 131 Natural Resources Code VTCA 1978), the Federal Strip Mining Control and Reclamation Act of 1977 and pursuant regulations, and/or other legal requirements and statutes applicable to the work.

The Contractor agrees to comply with all applicable laws, ordinances, rules, and regulations, including without limitation, the Federal Mining Safety and Health Act, the Federal Contract Work Hours and Safety Standards Act, the Texas Surface Coal Mining and Reclamation Act, the Texas Workers Compensation law, Texas Highway Laws, and the rules and regulations promulgated under those acts which are applicable to the Work.

The Contractor shall take all necessary precautions in performing the Work hereunder to prevent injury to persons or damage to property. The Contractor shall also comply with the Company's safety and environmental guidelines and Fitness For Duty policy as specified in "Exhibit C"

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The Company shall have the authority from time to time to impose such other reasonable rules and regulations for the mine areas the Company may deem advisable to protect the health, safety and welfare of workers and the public and to protect the environment. The Company shall have the right to stop work if any person in the mine is endangered for safety or health reasons, in order to prevent loss or damage, in order to prevent the continuation of defective or nonconforming work, in order to prevent covering up of work prior to inspection or observation, and in order to protect the environment. Penalties or fines assessed for failure of Contractor, its subcontractors or suppliers of any tier to comply with any laws, statutes, ordinances, safety codes, and official rules and regulations shall be paid by the Contractor and shall not be subject to reimbursement by the Company.

14. EMERGENCIES: In case of emergency, the Company may take such action as it deems necessary to protect life, its property, and safety and health of all persons working at the site.

15. PAYROLL TAXES AND WITHHOLDING, SALES, AND OTHER TAXES: The Contractor agrees to report timely and to pay timely all State and Federal taxes, assessments or contributions due and payable to either the State government or the Federal government or any subdivision thereof including without limitation all Social Security, Federal Income Tax, Withholding, and Unemployment Insurance. Contractor agrees to hold the Company harmless from liability on account of any taxes or assessments and agrees that in the event any governmental entity shall assert any levy or lien or other interest in or upon payments due or to come due to Contractor, that the Company without inquiry or independent determination of the merits may pay any amount claimed by such entity to such entity without liability to Contractor and any such payment shall be deemed a payment in full satisfaction of the Company's obligations under this Contract. In the event of conflicting private claims by any third party seeking to garnish, attach or otherwise levy upon the proceeds payable to Contractor under this Contract, the Company may interplead any amount due or which may become due to Contractor under the terms of this contract without any obligation on the part of the Company to investigate or make an independent determination of the validity of such claim.

16. PAYMENTS: The Company undertakes and agrees to pay the Contractor for doing and performing the Work herein specified, and the Contractor agrees to accept in full payment for such work as specified in "Exhibit B".

Payments may be withheld on account of: i) defective work not remedied, ii) claims filed, iii) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment, iv) damage to Company or another Contractor, or v) persistent failure to carry out the Work in accordance with the contract documents.

Final payments shall be made by the Company upon completion of the Work by the Contractor in a satisfactory manner and upon the Contractor furnishing satisfactory evidence of the payment of and for all wages, taxes, supplies, and materials furnished by the Contractor, and all other costs incurred in connection with the performance of said Work, and executing a final release as set forth in "Exhibit G" acknowledging full payment of the Company's obligations hereunder. Upon request

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by the Company, Contractor shall provide documentation necessary to support the charges for services hereunder.

The Company does not represent or guarantee to Contractor any certain quantities for unit price contracts. The maximum price for the work to be charged to the Company by the Contractor is \$10,000,000.00 subject to adjustments for work or portions of work performed under a unit price or as amended by Change Order "Exhibit E". In unit price contracts, actual quantities as determined by the Company shall control the total amount paid for the Work.

17. **EQUAL EMPLOYMENT OPPORTUNITY AND LISTING OF JOB VACANCIES:** The Contractor will comply with all provisions of Executive Orders 11246 and 11701, and of the lawful rules, regulations and relevant orders issued thereunder. The terms of the Equal Employment Opportunity Clause, attached hereto as "Exhibit D", are a part of this agreement.

18. **INDEMNITY:** The Contractor agrees to defend, indemnify, and hold Company, NRG Texas Power LLC, or any successor, and their corporate parents, subsidiaries, affiliates and their officers, and employees, and agents free and harmless from and against any and all claims, demands, causes of actions, suits or other litigation of every kind and character (including costs thereof and attorneys' fees) arising in favor of Contractor or any third party (including but not limited to, personnel furnished by Contractor or any subcontractor, or supplier of any tier) on account of bodily or personal injury, death or damage to property in anyway occurring, incident to this contract or the Work performed herein.

This same indemnity obligation shall be included in each subcontract with a Subcontractor.

Upon completion of the Work by the Contractor, Contractor agrees to execute a Release, as set forth in "Exhibit G", attached hereto and made a part hereof, acknowledging full payment of the Company's obligations hereunder and indemnifying and holding harmless the Company as specified in "Exhibit G".

All indemnifications given in or pursuant to this Contract shall survive completion of the Work and final acceptance by the Company.

19. **PROPRIETARY INFORMATION:** Contractor shall not, at any time during or after the term of this agreement, in any manner, either directly or indirectly, divulge or disclose, to any person, firm, or other entity, any proprietary information acquired from the Company without the express prior written consent of the Company. Proprietary information shall include, without limitation, any and all data or information, in whatever form, which has been made available by the Company to Contractor for its use, and the final products, results, conclusions, and/or reports, or materials developed or produced by Contractor in performing its duties under this agreement.

20. **INSURANCE:** Without limiting any of the Contractor's obligations hereunder, the Contractor will provide and maintain, until the Work is completed and accepted by the Company, insurance coverage naming the Company and NRG Texas Power LLC a named insured under this Contract with limits as specified in "Exhibit X", attached hereto and made a part hereof.

The Contractor, before commencing work on this Contract, shall deliver to Texas Westmoreland Coal Co., P.O. Box 915, Jewett, Texas 75846, two copies of certificates from insurance companies, or their agents, as set forth in "Exhibit X", attached hereto and made a part hereof. Duplicate copies of insurance certificates shall be furnished to the Company within ten (10) days after the execution of the contract or when requested by the Company. All insurance provided hereunder, including without limitation, shall contain a waiver of subrogation. Worker's Compensation insurance supplied by the Contractor shall incorporate the co-employer doctrine and shall apply equally to the Texas Westmoreland Coal Co. as to the Contractor.

✓ 21. TERM, TERMINATION AND DEFAULT: The initial term of this agreement shall be one year from the date first written above; provided that the Company may extend the term of this agreement on a year to year basis as mutually agreed to by both the Company and the Contractor, not to exceed a total of ten years by giving prior written notice to the Contractor at least thirty days prior to the termination date. The Company specifically reserves the right to terminate this contract in the event the Work herein provided for is not prosecuted with the promptness and diligence which Company believes is necessary to complete the Work within the time limit herein provided, or if the quality of said Work does not comply with the standards of the Company. The right to terminate shall be in addition to any other right to damages or other remedy which Company may have against Contractor.

If the Contractor is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or fails to make prompt payment to Subcontractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of this contract, and fails within seven days after receipt of written notice to commence to continue correction of such default, neglect or violation with diligence and promptness, the Company, without prejudice to any other remedy to which the Company may have, may terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods the Company may deem expedient. In such case the Contractor shall not be entitled to any further payment until the Work is finished.

✓ If the unpaid balance of the contract sum exceeds the amount necessary for finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Company. This obligation for payment shall survive the termination of the Contract. In addition, upon thirty (30) days written notice to the Contractor, the Company may, without cause and without prejudice to any other right to which the Company may be entitled, elect to terminate this agreement. If for the convenience of the Company this contract is terminated, the Contractor shall be paid for all work executed and any expense sustained plus a reasonable profit.

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22. ACCESS TO WORK: Company at all times shall have access to the Work wherever it is in progress provided Company shall not interfere with or direct such Work.

NOTICES: Whenever in this Agreement it shall be provided that notice of demand be given by either Party to the other, such notice or demand shall be given in writing and forwarded by certified or registered mail addressed as follows:

To Contractor at: Flex Source, LLC
415 N. Center St., Suite 4
Longview, TX 75601

Attention: Jana M. Russell (903) 234-4525
Fax (903) 234-4584

To Company at: Texas Westmoreland Coal Co.
P.O. Box 915
Jewett, Texas 75846
Attention: Contract Administration (903) 626-6365

Any Party to whom notice is required to be given may change such address by written notice by certified or registered mail to the other Party.

24. AUDIT: Company shall have the right, to be exercised in writing not later than six (6) months after receipt of final invoice, to have its auditors review such records of Contractor as may be necessary to substantiate calculations and figures utilized by Contractor in determining billing procedures and amounts.

25. TOTAL AGREEMENT: This contract expresses the total agreement between the parties. All oral or written negotiations and prior or subsequent dealings are merged into this contract. Contractor may not assign or subcontract this contract without the express written consent of the Company. This contract is binding on all heirs, successors, and administrators of the Contractor. Any amendment to this contract must be in writing signed by both parties hereto and all terms and conditions shall remain in effect. All notices shall be in writing to the addresses stated herein.

26. GOVERNING LAWS: This contract shall be governed by and interpreted in accordance with the laws of the State of Texas.

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IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed in duplicate the day and year first above written.

TEXAS WESTMORELAND COAL CO.

ATTEST:

By Joseph E. Micheletti

Its President

Date: _____

Date: 8/13/2009

FLEX SOURCE, LLC

ATTEST:

By [Signature]

Its President

Date: _____

Date: 8-12-09

Contract # 31325

**TEXAS WESTMORELAND COAL CO.
JEWETT OPERATIONS
EXHIBIT A
CONTRACT LABOR SERVICES**

SCOPE OF WORK

The Contractor is directed to provide for the completion in every detail of the Work described. The Contractor shall furnish all labor, personal protective equipment, safety training, and supplies required to complete the Work in accordance with the terms and conditions of this Contract.

✓ The Contractor shall provide temporary contract labor for operating equipment as well as other operations and maintenance needs as authorized and directed by the Company's representative at the rates shown in Exhibit "B". The Company does not guarantee the quantity of labor hours to be utilized under this agreement. The Company shall pre-approve the quantity of temporary contract employees as required and the hours of service prior to placement and may change or suspend the operation at any time with 30 days notice to the Contractor.

The Contractor shall perform all work complying with Federal and TWCC Safety regulations as outlined in Exhibit "C" of this contract agreement. The Contractor agrees that work performed not meeting Federal and TWCC safety requirements may be grounds for immediate termination of this agreement. TWCC has a zero tolerance policy for poor safety practices.

The Contractor's responsibility is to furnish all parts, supplies and materials required to perform the work as stated above. However, if the Contractor receives items from Texas Westmoreland Coal Co.'s warehouse or open stock the Company shall charge to the Contractor the higher of the warehouse or replacement cost plus 30% to cover the carrying costs and the shipping and handling. The Contractor shall be charged the appropriate sales tax in addition to the marked up price. The charges shall be deducted from the Contractor's invoice with the supporting documentation to substantiate the charge. Failure to notify the Company that warehouse stock or open stock items were pulled for Contractor use shall be deemed as theft.

BACKGROUND:

Texas Westmoreland Coal Co. is a lignite coal mining company, located in Jewett, TX. The type of equipment used in this mining application is as follows: dozers, end dump trucks, motor graders, and backhoes, coal haulers, and excavators, water trucks, and other equipment not specified. Personnel provided to operate this type of equipment must be trained in safe operation of such equipment and be MSHA certified.

CONTRACTOR RESPONSIBILITIES:

- Recruit, hire, evaluate, replace, discipline, and terminate personnel provided to perform work.
- The Contractor must provide a designated supervisor, the supervisor must be on site at shift change (s) and available on a 24-hours/7 days per week basis as a contact person to administer the Contractor's employee issues that may arise from time to time. This includes employees

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that don't show up for work, performance problems, safety concerns, and in case of emergency situations.

- Properly screen recruits for the work, including drug testing prior to placement with the Company. In addition to drug testing prior to placement with the Company, the Contractor shall administer random drug testing throughout the course of the contract satisfactory to the Company.
- Provide required personal protective and other equipment including hardhat, safety glasses, earplugs, water cans, and steel-toed boots or shoes. Employees will be required to wear high visibility vests as per Company policies and procedures.
- Provide appropriate MSHA training (comprehensive) and MSHA annual refresher training for each recruit prior to placement with the Company. Safety training provided by the Contractor's personnel shall be paid as per the "MSHA Training Hourly Rate" provided in Exhibit "B", Payment to Contractor. MSHA requires the Contractor to pay the employee's hourly wage for the hours spent in safety training. Time invoiced for safety training must include the supporting documentation in the form of a "Certificate of Training" for each employee trained with the associated hours documented in a corresponding time sheet. No third party MSHA training fees will be reimbursed by the Company when the Contractor is unable to provide the training. The Company shall pay to Contractor the "Contractor's Hourly Rate" for hours worked in which the employees are being task trained.
- The hours worked shall be in accordance to the rotating shift schedule established by the Company. This shift schedule is subject to change at the Company's discretion. The Contractor shall invoice hours worked in accordance to the rotating shift schedule. In the event the Contractor's employee doesn't show up for work as per the designated work schedule and it is determined by the Company that this position must be filled for that shift, the Contractor shall provide replacement personnel at the normal hourly shift rate. If the Contractor covers the vacancy with an employee that has fulfilled a forty-hour work week, the Company shall not pay for the overtime premium. The premium portion shall be paid by the Contractor.

Timesheets must include the Crew Name, Crew Supervisor Name and Description of Work performed, for example, operating equipment and equipment number identification, other operations activities or maintenance tasks performed.

Crew lists shall be provided to the Company. When a crew changes then revised crew lists shall be provided. All employees shall be listed in alphabetical order on the crew list. Time sheets should also be in alphabetical order.

- Fill vacancies within 48 hours of the occurrence.
- Submit invoices weekly for time worked with approved timesheets attached. Contractor must also verify the hours invoiced with the supporting documentation prior to submittal to the Company for payment. Invoices submitted to the Company for approval that is not in accordance to the terms and conditions of the agreement shall be returned to the Contractor for corrections.

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OTHER:

- The Contractor reserves the right to subcontract to Russell & Sons Construction Co., Inc. as long as the total compensation is equal to the agreed employee rate schedule in this agreement. In no event will the billing rate exceed the current billing rates. Should the number of employees required by the Company drop below twenty (20) employees or exceed one hundred (100) employees both parties may consider a different hourly rate structure.

- The Contractor's rates are based upon Contractor's current cost for Worker's Compensation insurance. In the event Contractor's annual cost of Worker's Compensation insurance rates increase by 50% as compared to the annual cost in place as of the date hereof, the Contractor will provide the Company with documentation supporting and establishing the level of such increase, in which case an equitable adjustment agreeable to both parties shall be made to the Contractor's rates.

The Company or the Contractor may terminate this agreement within 60 days of receipt of such documentation, by providing written notice of termination, should the parties be unable to reach an agreement on an equitable adjustment.

- The Contractor shall provide its employees with a Safety Bonus Program and an Individual Award Program as detailed below:

Safety Bonus Program

The safety bonus will be paid based on group achievement of No Lost Time Accidents (LTA) for the quarter, or other safety achievement targets agreed to by the Company and the Contractor and such safety bonus program shall be at the Contractor's expense.

Pay out is as follows:

1 st Quarter	\$50.00
2 nd Quarter	\$75.00
3 rd Quarter	\$125.00
4 th Quarter	\$225.00

For each quarter completed beyond four consecutive quarters without a LTA, the safety bonus shall be paid at \$225.00 per quarter rate.

Individual Award Program

The individual performance award shall be paid based on an individual's performance in the areas of attendance, work performance, and individual safety compliance. Flex-Source supervisors and management shall determine each person's eligibility for the quarter. TWCC's supervisors and management shall be consulted for feedback and input on each individuals' work performance and safety compliance prior to the quarterly awards. Pay out of such individual awards shall be at the Contractor's expense.

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Pay out is as follows:

1 st Quarter	\$100.00
2 nd Quarter	\$100.00
3 rd Quarter	\$100.00
4 th Quarter	\$100.00

ADDITIONAL TERMS:

The determination of the classification between Mechanic/Welder and Journeyman/Mechanic/Welder and an Operator and Journeyman Operator shall be at the sole discretion of the Company's Contract Administrator.

Payments are due for time worked only except in the case of rain-out or other causes of job shut down; Contractor operators who show-up for work and are sent home will receive two (2) hours "show-up" time or actual number of hours worked. Operators who do not report for work at such times are not eligible.

Payments to the Contractor shall be Net 30 Days from receipt of invoice.

COMPANY RESPONSIBILITIES:

- Provide high visibility vests (the Company shall provide the initial vest for each employee, vests shall be replaced at the Company's sole discretion.) The Contractor shall bear the expense for the replacement of vests due to carelessness or abuse.
- Provide port-a-cans
- Provide MSHA site-specific training and/or hazard training.
- Provide transportation for personnel from the contractor parking area to the jobsite.
- Provide site office space to Contractor, location as designated by the Company
- Establish job assignments and work activities of Contractor employees

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**TEXAS WESTMORELAND COAL CO.
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EXHIBIT B**

CONTRACT LABOR SERVICES

The Contractor shall submit all invoices to the Company for review and approval on a weekly basis and shall be accompanied by supporting timesheets and other required documents as described in Exhibit "A" of this agreement.

Payments to the Contractor do not constitute acceptance of faulty work and/or materials, or acceptance of quantities, or final completion. Payments to the Contractor shall be Net 30 days from receipt of the invoice.

All invoices and supporting documentation shall be mailed on a weekly basis to the following address:

Texas Westmoreland Coal Co.
P.O. Box 915
Jewett, Texas 75846
Attention: Accounts Payable

All payments made to the Contractor shall be in accordance to the attached rate schedule, Exhibit "B-1".

The determination of the classification between a Mechanic/Welder and a Journeyman/Mechanic/Welder and an Operator and Journeyman Operator shall be at the sole discretion of the Company's Contract Administrator.

Payments are due for time worked only except in the case of rain-out or other causes of job shut down; Contract operators who show-up for work and are sent home shall receive two (2) hours "show-up" time or the number of hours actually worked. Operators who do not report for work at such times are not eligible.

Safety training provided by the Contractor's personnel shall be paid as per the "MSHA Training Hourly Rate" provided in Exhibit "B", Payment to Contractor. MSHA requires the Contractor to pay the employee's hourly wage for the hours spent in safety training. Time invoiced for safety training must include the supporting documentation in the form of a "Certificate of Training" for each employee trained with the associated hours documented in a corresponding time sheet. No third party MSHA training fees will be reimbursed by the Company when the Contractor is unable to provide the training. The Company shall pay to Contractor the "Contractor's Hourly Rate" for hours worked in which the employees are being task trained.

- * The hours worked shall be in accordance to the rotating shift schedule established by the Company. The Contractor shall invoice hours worked in accordance to that rotating shift schedule. In the event the Contractor's employee does not show up for work as per the designated work schedule and it is determined by the Company that this position must be filled for that shift, the Contractor shall provide replacement

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personnel at the normal hourly shift rate. If the Contractor fills the vacancy with an employee that has fulfilled a forty-hour work week, the Company shall not pay for the overtime premium. The premium portion shall be paid at the Contractor's expense.

Safety Bonus Program

The safety bonus will be paid based on group achievement of No Lost Time Accidents (LTA) for the quarter, or other safety achievement targets agreed to by Company and Contractor and such safety bonus program shall be at the Contractor's expense.

Pay out is as follows:

1st Quarter \$50.00
2nd Quarter \$75.00
3rd Quarter \$125.00
4th Quarter \$225.00

For each quarter completed beyond four consecutive quarters without a LTA, the safety bonus shall be paid at \$225.00 per quarter rate.

Individual Award Program

The individual performance award shall be paid based on an individual's performance in the areas of attendance, work performance, and individual safety compliance. Flex-Source supervisors and management shall determine each person's eligibility for the quarter. TWCC's supervisors and management shall be consulted for feedback and input on each individuals' work performance and safety compliance prior to the quarterly awards. Pay out of such individual awards shall be at the Contractor's expense.

Pay out is as follows:

1st Quarter \$100.00
2nd Quarter \$100.00
3rd Quarter \$100.00
4th Quarter \$100.00

EXHIBIT "B-1"

2010 Rate per hour

Operator Experience

0-3 Months

4-6 Months

7-12 Months

1+ years

*Holiday Rate Multiplier

Night Shift Differential

Operator/Laborer

Laborer

Journeyman/Operator

Mechanic/Welder

Mechanic

Journeyman Mech/Welder

Other

Electrical Consultant

Supervisor with Pickup

Employee Rate		20-49 Employees		50-69 Employees		70 to 100 Employees		MSHA Rate
Employee ST	Employee OT	Contract ST	Contract OT	Contract ST	Contract OT	Contract ST	Contract OT	Contractor
\$14.14	\$21.21	\$24.82	\$35.25	\$23.96	\$34.23	\$23.46	\$33.51	\$22.69
\$14.70	\$22.05	\$25.68	\$36.53	\$24.79	\$35.48	\$24.28	\$34.73	\$22.69
\$15.29	\$22.93	\$26.60	\$37.87	\$25.69	\$36.80	\$25.16	\$36.02	\$22.69
\$16.41	\$24.61	\$28.35	\$40.44	\$27.40	\$39.33	\$26.82	\$38.49	\$22.69

1.6670 (Equal to 8 hours of holiday pay)

\$0.30

\$14.14	\$21.21	\$24.82	\$35.25	\$23.96	\$34.23	\$23.46	\$33.51	\$22.69
\$18.66	\$28.00	\$31.85	\$45.62	\$30.82	\$44.40	\$30.17	\$43.45	\$22.69

\$16.41	\$24.61	\$28.35	\$40.44	\$27.40	\$39.33	\$26.82	\$38.49	\$22.69
\$19.80	\$29.69	\$33.62	\$48.22	\$32.55	\$46.94	\$31.86	\$45.94	\$22.69

(Reference Only)

(Contract Rates)

2011 Rate per hour

Operator Experience

0-3 Months

4-6 Months

7-12 Months

1+ years

*Holiday Rate Multiplier

Night Shift Differential

Operator/Laborer

Laborer

Journeyman/Operator

Employee Rate		20-49 Employees		50-69 Employees		70 to 100 Employees		MSHA Rate
Employee ST	Employee OT	Contract ST	Contract OT	Contract ST	Contract OT	Contract ST	Contract OT	Contractor
\$14.57	\$21.85	\$25.84	\$36.70	\$24.49	\$34.98	\$23.83	\$34.03	\$23.26
\$15.14	\$22.71	\$26.73	\$38.03	\$25.34	\$36.26	\$24.66	\$35.27	\$23.26
\$15.74	\$23.62	\$27.69	\$39.42	\$26.26	\$37.61	\$25.55	\$36.58	\$23.26
\$16.90	\$25.35	\$29.51	\$42.10	\$28.00	\$40.20	\$27.24	\$39.09	\$23.26

1.6670 (Equal to 8 hours of holiday pay)

\$0.30

\$14.57	\$21.85	\$25.84	\$36.70	\$24.49	\$34.98	\$23.83	\$34.03	\$23.26
\$19.22	\$28.84	\$33.16	\$47.49	\$31.50	\$45.38	\$30.64	\$44.13	\$23.26

Mechanic/Welder

Mechanic	\$16.90	\$25.35	\$29.51	\$42.10	\$28.00	\$40.20	\$27.24	\$39.09	\$23.26
Journeyman Mech/Welder	\$20.39	\$30.59	\$35.00	\$50.20	\$33.27	\$47.97	\$32.36	\$46.66	\$23.26

Other

Electrical Consultant	\$42.50
Supervisor with Pickup	\$50.00

*(Reference Only)**(Contract Rates)** Holiday Rate-Paid at regular time rate only for all hours worked on the holiday.

Based on the following criteria:

- Work the complete last regularly scheduled shift prior to the holiday.
- Work the complete shift associated with the holiday.
- Work the complete next regularly scheduled shift after the holiday.

Holiday is defined as the 24 hour block of time on the holiday.

Holidays to be acknowledged:

New Year's Day
 Good Friday
 Memorial Day
 July 4th
 Labor Day
 Thanksgiving Day
 Day after Thanksgiving
 Christmas Eve Day
 Christmas Day

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EXHIBIT C**

ENVIRONMENTAL, SAFETY, SECURITY, AND SURVEYING

I. GENERAL

The Contractor shall coordinate with and accommodate other Contractors and Company personnel working in the area.

The Contractor shall notify the Company before any equipment is brought onto the mine site to perform work. A pre-construction inspection will be held to determine if the equipment meets MSHA and Company safety requirements.

Contractor personnel are required to park in the Company's operations parking lot and will be transported to the project site by Contractor company vehicles. No private vehicle will be allowed on the mine site. Vehicles parked within the Company parking area should not interfere with Company personnel. No loitering!

If during construction the Contractor encounters any archaeology sites, it must cease all construction in the area and notify the Company at once.

II. SITE CONTROL (ENVIRONMENTAL REQUIREMENTS)

Without limiting other general provisions stated elsewhere in the contract, the following specific environmental requirements will apply to all work:

It is the responsibility of the Contractor to know and comply with all State and Federal rules that apply to the type of work they will be performing while on the mine site. Company Contractors performing work at the Jewett Mine must submit a list of all chemicals, solvents, paints, fuels, oils, etc., that will be brought to the site. Included with this list shall be MSDS forms for each material, anticipated usage, and method of disposal of wastes. This shall be done upon award of the contract.

At no time will the Contractor be allowed to drain oils or dispose chemicals onto mine property. In the event of a spill of oil, diesel, solvent, etc., the Contractor is to contact the Facility Emergency Coordinator. The Contractor is responsible for cleaning up spills and disposing of waste in a manner acceptable to the Texas Natural Resources Conservation Commission and Environmental Protection Agency. All on-site fuel storage tanks must be bermed. The berms must be lined with clay or an artificial liner, and the berms must have containment volumes sufficient to contain a spill. The berms and containment areas must be maintained at all times. Any leaks, spills, or stained soils must be addressed immediately. The Contractor must address

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all pertinent State and Federal regulations and, if necessary, have a SPCC plan. Equipment crossing of flowing creeks is not allowed within the permit area. The following are areas where any disturbance is prohibited or limited:

Within 100' of:	continuously flowing streams center line of pipelines public roads (except intersections) cemeteries
Within 300' of:	occupied dwellings churches
Designated areas:	archaeology sites (buffer sign) mined out areas (MOA) referenced or research sites (buffer sign) permit boundaries unbonded areas

No disturbance outside permit boundary or within the listed areas is allowed unless specifically approved by the Company.

Burning shall be conducted only between the hours of 9 a.m. and 5 p.m. No material shall be added to existing fires and no fires shall be ignited after 1 p.m. Heavy oils, asphaltic materials and vehicle tires shall not be burned. An attendant shall be on the site during the burning period. Only burning of trees and brush from grubbing is allowed.

Stream fords are prohibited unless they are approved by the Railroad Commission of Texas as temporary routing across ephemeral or intermittent streams.

Reclaimed lands that have been final regraded, mulched, and/or seeded must not be driven on by any vehicle or heavy equipment. When driving through reclaimed areas, stay on designated roads.

Prior to the disturbance (following clearing and grubbing) of topsoil in areas where a topsoil substitute is not in effect, topsoil must be salvaged and segregated. Stockpiled topsoil must be protected from degradation i.e., no traffic over it, no mixing with other soils, no erosion. Stockpiled topsoil should be posted with a topsoil sign.

Loss of sediment from construction areas must be minimized. This may be done by the construction of check dams, sediment traps, berms, silt fences, hay bales, etc.

Dust on roads and in work areas must be controlled.

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III. SAFETY

1. STATEMENT OF POLICY - Company requires all Contractors and/or Subcontractors on the Site to establish and maintain a Jobsite Safety Program that complies with Mine Safety and Health Administration (MSHA) regulations and Company's Safety Guidelines. The Company will monitor the Safety Program used by each Contractor and/or Subcontractor to ensure compliance with MSHA and OSHA regulations, contractual safety commitments, and Company's Site Safety Guidelines.
2. SCOPE - The Site Safety Guidelines apply to Contractor, all of Contractor's employees, and Contractor's Subcontractors and their employees of any tier, participating in the actual construction, maintenance, or repair of Company's or NRG TEXAS POWER LLC's property or performing duties incidental thereto.
3. COMPANY SAFETY REPRESENTATIVE RESPONSIBILITY - The Company's Safety Representative will be responsible for surveying safety and fire protection activities of Contractor and for keeping the Company apprised of his findings. The Company's Safety Representative will interface with the Contractor in the following manner:
 - 3.1 Making periodic inspections and evaluations of Contractor's Safety Program;
 - 3.2 Conducting investigations of fires, property damage, personal injury accidents, and documenting results of investigations;
 - 3.3 Counseling with Contractor's safety representative regarding Company's safety requirements.
 - 3.4 Coordinating MSHA reporting to see that reporting conforms with current requirements;
 - 3.5 Auditing Contractor safety performance, sending audit information copies to the Company and the Contractor;
 - 3.6 Accompanying MSHA inspectors as Company's Representative on MSHA inspections or investigations;

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- 3.7 Terminating related work activities in case of imminent danger to the life of any person on the Jobsite until the cause is corrected; and
- 3.8 Requesting that the Company terminate related work activities in cases of dangerous conditions or recurrent safety and fire protection problems.

4. **CONTRACTOR RESPONSIBILITY** - Contractor shall have responsibility for and shall be accountable to the Company for implementation of a Safety Program that, as a minimum, satisfies the requirements set forth for Contractor under these Guidelines and with applicable MSHA and OSHA regulations and standards. A copy of the Safety Program used by Contractor shall be submitted to the Company's Safety Representative for review before the Contractor commences Work.

Outlined below is a list of the minimum requirements to be satisfied by Contractor's Safety Program. The method of procedure development is the Contractor's responsibility, subject to Company's approval. Contractor shall be responsible for completely fulfilling the following requirements:

5. **GENERAL SITE REQUIREMENTS**

- 5.1 All Contractor employees, working on mine property, shall be a minimum of eighteen (18) years of age and be lawfully authorized to work in the United States of America.
- 5.2 Employees on the Jobsite shall wear hard hats at all times with Contractor's logo affixed;
- 5.3 Employees on the Jobsite shall wear steel toe safety foot wear, safety glasses and high visibility vests as specified by the Company;
- 5.4 Alcoholic beverages or illegal drugs shall not be permitted on Jobsite;
- 5.5 Firearms shall not be permitted on the Jobsite;
- 5.6 Horseplay or running shall not be permitted on the Jobsite;
- 5.7 Glass containers shall not be permitted in the Work areas;

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- 5.8 Employees shall wear full shirts, with shoulders covered, and ankle length pants while on the Jobsite;
- 5.9 Open flames shall not be permitted on the Jobsite without written authorization from the Company.
- 5.10 All speed limits and traffic signs shall be obeyed;
- 5.11 All danger and caution signs shall be observed; and
- 5.12 Littering shall not be permitted on the Jobsite;
- 5.13 Vehicles shall be equipped with buggy whips;
- 5.14 Utility trailers shall be equipped with safety chains rated for the load.
- 5.15 Vehicle headlights shall remain on at all times.
- 6. MSHA AND OSHA REGULATIONS - In addition to the requirements stipulated in 5.0 above, Contractor shall comply with 30 CFR Mine Safety and Health Administration Regulations and OSHA Regulations.
- 7. SAFETY REGULATIONS - Contractor shall appoint at least one person to be responsible for coordinating Contractor's Safety Program. This person shall interface with Company's Safety Representative to assure compliance with Company's safety requirements.
- 8. FIRST AID AND MEDICAL CARE - Contractor will provide and maintain adequate first aid facilities and emergency medical care on the Jobsite for the duration of the Project. The Contractor shall furnish transportation to offsite medical care facilities whenever offsite treatment is needed.
- 9. SAFETY ORIENTATION AND TRAINING - Contractor shall orient its new employees to its Safety Program and safe working habits and potential work hazards particular to the Work; documentation of this orientation is required. Weekly safety meetings shall be conducted for all employees; attendance at safety meetings shall be mandatory.
- 10. RECORDKEEPING REQUIREMENTS - Contractor shall be responsible for keeping the required records and MSHA forms up to date and available

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at the Jobsite. Required records and MSHA forms shall be made available to Company upon request.

11. **JOBSITE SAFETY AUDIT DEFICIENCIES** - During Jobsite safety audits, Company's Safety Representative will monitor the activities of Contractor for deficiencies in work practices, use of personal protective equipment, fire protection devices, safety devices, and housekeeping. Deficiencies found during audits will be noted on a Site safety audit form and a copy of the Site safety audit form will be given to the Contractor. The Contractor shall be responsible for initiating corrective action promptly.
12. **ACCIDENT INVESTIGATION AND REPORTING**
 - 12.1 Contractor shall investigate all accidents involving its employees or equipment.
 - 12.2 Contractor shall inform Company of all injuries or accidents immediately upon occurrence or discovery.
 - 12.3 Company will initiate an accident investigation to determine facts related to the cause of any accident involving lost work days, employees of two or more Contractors, property damage involving two or more Contractors, or damage to Owner's or Company's property. Following the accident investigation, Company's Safety Representative, Company and representatives of the Contractors involved shall discuss the accident and steps to be taken to prevent recurrence.
13. **HOUSEKEEPING - REMOVAL OF DEBRIS** - Contractor shall clean up all affected work areas on a continuing basis and shall remove and properly dispose of all waste, hazardous, or unusable material.
14. **PRE-SHIFT INSPECTIONS** - Contractor shall perform all pre-shift inspections of equipment and work areas as required by MSHA, and maintain the required records.
15. **FITNESS FOR DUTY** - Texas Westmoreland Coal Co., as part of its effort to maintain a workplace free from the ill effects of drugs and alcohol use has a Fitness For Duty policy which includes a comprehensive provision for drug and alcohol testing. The drug and alcohol testing will occur either as the result of probable or reasonable cause or as part of a

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random screening program which calls for random testing of at least 50% of the workers at TWCC's workplace each year.

As a Contractor working for Texas Westmoreland Coal Co., you are required to support this policy and to require your employees to submit to the same testing (either random or for reasonable cause) when asked to do so by TWCC. This is considered a condition of contract compliance. Contract employees refusing to consent to a screening or whose screening is positive will immediately be removed from the property and will not be allowed future access. Additionally, any contract employee whose actions suggest that he (or she) is under the influence of drugs or alcohol and could therefore be a danger to himself or others will be refused entry or immediately removed from the property.

When the Company orders and administers the drug testing, the costs associated with administering the tests will be borne by TWCC; however TWCC will not be responsible for the minimal labor cost incurred by the Contractor as the result of the testing.

The Company reserves the right to audit the Contractor's drug testing program. The Contractor agrees to submit a report, on request, on a monthly basis to the Company's Contract Administrator indicating the number of tests performed, the lab that performed the test, and the final results of the test as to either a positive or a negative result. Contractor employees who test positive shall be released from duty to perform services on Company property.

The Contractor shall disclose to the Company the frequency of drug testing in order to satisfy the requirement of testing 50% or more of its workforce in a twelve-month period.

16. **THEFT** - It is the Company's policy not to tolerate the theft of property. As a Contractor working for the Company, you are required to support this policy. The contents of containers such as packages, boxes, bags, lunch boxes, and etc., will be subject to random inspections before such containers may be taken out of or onto the premises. Both Company employees and Contractor employees are required to submit to such inspections. Also subject to inspection are vehicles, auto trunks, vehicle glove compartments, storage areas, lockers, tool boxes, all work areas, and etc.

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IV. SAFETY TRAINING AND VIOLATIONS CLAUSE

The Contractor and Company recognize and acknowledge that compliance with the aforementioned safety requirements, environmental, and site control requirements, is essential to the maintenance of this Agreement, to the health and safety of workers, and to the goodwill and reputation of the Company within the marketplace. Although increased administrative cost and harm to goodwill and reputation would result from Safety Training and Environmental Reporting Violations, it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Company for failure to comply with the requirements. Therefore, this liquidated damages provision is set forth as a reasonable estimate of the damages incurred by reason of any such failure to comply by the Contractor.

Contractors performing service at the Jewett Mine who violate Safety Training requirements as stipulated by MSHA and/or the Company, or fail to submit a list of all chemicals, solvents, paints, fuels, oils, etc. (Material Safety Data Sheets), or violate any other requirements may, at the option of the Company, be subject to actual damages or to the following liquidated damages (The time frame for this assessment shall be based on occurrences with a rolling 12 month period.):

First Occurrence: \$250.00 liquidated damages per occurrence for each Contractor's employee in violation of the training requirements.

Second Occurrence: \$500.00 liquidated damages per occurrence for each Contractor's employee in violation of the training requirements.

Third Occurrence: \$1,000.00 liquidated damages per occurrence for each Contractor's employee in violation of the training requirements. In the case of a third occurrence violation the Contractor may be removed from the Bidders List for future projects for the remainder of the rolling 12 month period.

Fourth Occurrence: May result in the current contract in progress being terminated and the Contractor may be removed from the company's bid list for a period of six months.

The Contractor shall remit payment to the Company immediately upon written notification by the Company of a safety training violation. The term "violation" is defined as an occurrence where a Contractor's employee has not received approved documented training, or the solvents, paints, fuels, oils, etc., (inclusion of the Material Safety Data Sheets (MSDS forms) that the Contractor shall be bringing on site) or does not comply with site control and environmental requirements.

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Safety, Environmental, or Site Control Violations resulting in damage to the Company that can be quantified with regard to cost (chemical spills, improper disposal of hazardous wastes, surface disturbances or other damage & etc.), shall, without limiting other rights and remedies contained elsewhere in this contract, be subject to actual damages.

V. SURVEYING

Contractors are generally responsible for their own surveying. However, when requested by the Contractor for surveying assistance, TWCC shall perform the work (depending upon availability) in accordance with the following rates:

One man crew/GPS	@ \$210.00 /hr. plus mileage @ 0.38/mile
Two man crew/GPS	@ \$220.00 /hr. plus mileage @ 0.38/mile
Office/Computer work	@ \$60.00/hr.

EXHIBIT D
Revised 01/01/92

EQUAL EMPLOYMENT OPPORTUNITY

I. NON-DISCRIMINATION UNDER FEDERAL CONTRACTS: Executive Order 11246, as amended; 41 CFR Sections 60-1.4, 60-1.7, 60-1.8, 60-1.40, 60-2.

A. EQUAL OPPORTUNITY CLAUSE

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that the employees are treated fairly during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this non-discrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity Clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

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6. In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or contract unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or contract as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

B. Contractor agrees that the seven paragraphs EQUAL OPPORTUNITY CLAUSE set forth in Executive Order 11246, as amended, will be adhered to by Contractor for all contracts between the parties in the amount of \$10,000 or more per annum which are not exempted therefrom.

C. CERTIFICATION OF NONSEGREGATED FACILITIES

Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform services at any location under his control, where segregated facilities are maintained, and that Contractor is aware of and understands any breach of the foregoing is a violation of the Equal Opportunity Clause of Executive Order 11246. As used herein, the term "segregated facilities" includes, but is not limited to, waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color or national origin, because of habit, local custom or otherwise. Prior to the award of any subcontract exceeding Ten thousand (\$10,000) Dollars which is not exempt from the provisions of the Equal Opportunity Clause of Executive Order 11246, Contractor shall obtain from the proposed subcontractor a certificate addressed to Contractor and substantially identical to

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Contractor's certificate as given above. Also, he will retain such certification in his files, and forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF
REQUIREMENT FOR CERTIFICATIONS
OF NONSEGREGATED FACILITIES**

A Certificate of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding Ten Thousand (\$10,000) Dollars which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

- D. Contractor certifies to the filing of annual compliance reports on Standard Form EEO-1 in compliance with Rules and Regulations, OFCC, U.S. Department of Labor, in 41 CFR

Section 60-1.7 unless exempted under Section 60-1.5 and certifies to the proper maintenance of a written and signed affirmative action plan if Contractor has 50 or more employees and the Contract is for \$50,000 or more as required under Section 60-1.40, unless so exempted.

- E. Contractor certifies that these terms have been included in all of Contractor's subcontracts, unless exempted.

II. AFFIRMATIVE ACTION - REHABILITATION ACT OF 1973, as amended: Executive order 11758; (29 U.S.C. Section 793), as amended.

- A. The Contractor is aware of and is fully informed of its responsibilities under Section 503 of the Rehabilitation Act of 1973, Executive Order 11758, and the rules, regulations and orders promulgated by the Department of Labor pursuant thereto in 41 CFR Section 60-741 and the Contractor agrees to and shall be bound by and certifies that it has complied with the provisions contained therein which provisions are incorporated herein by reference, unless exempt herefrom.

III. UTILIZATION OF MINORITY BUSINESS ENTERPRISES: Executive Order 11625; (40 U.S.C. Section 486c); 41 CFR Subpart 1-1.1310-2(a), (b).

EXHIBIT D
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- A. The Contractor is aware of and is informed of its responsibilities under Executive Order 11625, as amended, and the Federal Procurement Rules and Regulations promulgated pursuant thereto; and the Contractor agrees to and shall be bound by and certifies that it has complied with the provisions aforesaid and those contained in 41 CFR 1-1.1310-2, which provisions are incorporated herein by reference unless exempt herefrom.
- IV. AGE DISCRIMINATION: Executive Order 11141; (29 U.S.C. Chapter 14), as amended:
- A. The undersigned Contractor further agrees that in the performance of this Contract it shall not in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupation qualification, retirement plan, or statutory requirement, and that Contractor shall not specify in solicitations, or advertisement for employees to work on government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement, as required under Executive Order 11141.
- V. AFFIRMATIVE ACTION - VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT: ~~Executive Order 11701~~; (38 U.S.C. Section 2012), as amended; 41 CFR Section 60-250.
- A. The Contractor is aware of and is informed of its responsibility under the Vietnam Era Veterans Readjustment Assistance Act of 1974, 38 U.S.C. Section 2012, Executive Order 11701, and the Rules and Regulations promulgated by the Department of Labor pursuant thereto (41 CFR Section 60-250); and the Contractor agrees to and shall be bound by and certifies that it has complied with the provisions contained therein, which provisions are incorporated herein by reference, unless exempt herefrom.

Contractor shall comply with the foregoing provisions and all amendments, additions and modifications thereof, and shall immediately notify the Company in writing in the event Contractor is unable to comply with any such provisions.

EXHIBIT E
CONTRACT CHANGE ORDER

TEXAS WESTMORELAND COAL CO.

and

FLEX-SOURCE LLC

Capital ☐ Expense ☐

Code:

Contract No.:

Change Order No.:

Date:

Pursuant to contract dated, _____, Contractor is hereby directed to proceed with the following work:

The location of said work is as directed by the Company's representative.

Payment for said work is as per contract.

Materials supplied by the Owner are as per contract.

Materials supplied by the Company are as per contract.

Work to commence as directed by the Company's representative. Work shall be completed as agreed to by the Contractor and the Company's representative.

Special conditions or remarks: None

Contract Value

Current Contract Balance _____

This Change Order

New Contract Balance _____

Revised Contract Value

ACCEPTED:

TEXAS WESTMORELAND COAL CO.

FLEX-SOURCE, LLC

Requested by

Date

By

Date

Authorized

Date

Approved

Date

**EXHIBIT F
GENERAL SERVICE CONTRACT
CONTRACT WORK AUTHORIZATION**

TEXAS WESTMORELAND COAL CO.

Capital ☐ Code _____

and

Expense ☐ Code _____

Contract No. _____

FLEX-SOURCE, LLC

Work
Authorization No. _____

Date: _____

Pursuant to Contract dated _____, Contractor is hereby directed to proceed with the following work:

Payment for said work upon completion will be due in the amount as detailed by the unit rates defined in "Exhibit B" and shall not exceed \$ _____

Materials supplied by the Owner _____

Materials supplied by the Contractor _____

Work to commence on _____ Work to be completed before _____

Special Conditions or remarks:

Beginning Contract Balance	\$ _____
Amount of the Work Authorization	\$ _____
Remaining Contract Balance	\$ _____

REQUESTED BY:

APPROVED BY:

JEWETT OPERATIONS
EXHIBIT G
FINAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That _____
of _____ hereinafter called
"Contractor," hereby acknowledges receipt of payment by Texas Westmoreland Coal Co., a
corporation, having its registered office at 2 North Cascade Avenue, Colorado Springs, CO 80903
and its Jewett Operations office at 6 miles North of Jewett on Highway 39, P. O. Box 915, Jewett,
Texas 75846, hereinafter called "Company," of the total sum of _____

(_____), and does hereby accept such sum in full payment, satisfaction
and discharge of all amounts due and owing to the Contractor under that certain contract between
the Contractor and the Company dated _____, and any amendments, changes or
additions thereto and for all extra work in connection with said contract, or arising out of or in
connection with _____

In consideration of said payment and other good and valuable consideration, Contractor hereby
releases and forever discharges the Company and NRG TEXAS POWER LLC and their respective
officers, agents, servants and employees of and from any and all claims, demands, actions, causes
of action, obligations, and liabilities of every kind and character whatsoever, in law or equity, which
Contractor may have or assert against the Company and NRG TEXAS POWER LLC, their
respective officers, agents, servants and employees.

In further consideration of said payment and other good and valuable consideration, Contractor
hereby undertakes and agrees to indemnify and hold harmless the Company and NRG TEXAS
POWER LLC, their respective officers, agents, servants, and employees, of and from any and all
claims, demands, actions, and causes of action for damages to property or injury to persons, debts,
liens, obligations, and liabilities of every kind and character whatsoever, in law and equity, which
any person or persons, corporation, partnership, or association may have or assert against the
Company and NRG TEXAS POWER LLC, their respective officers, agents, servants and
employees, arising out of, resulting from, or in connection with the performance of said work by
Contractor, or any of Contractor's, Subcontractors or Suppliers, or any act or omission by
Contractor or any of Contractor's Subcontractors or Suppliers, in the performance of the aforesaid
contract.

IN WITNESS WHEREOF, Contractor has executed this Release in duplicate this day of _____

By _____
Contractor

WITNESS

STATE OF TEXAS §
 §
COUNTY OF _____ §

ss.

On this _____ day of _____, 19__, before me, the undersigned Notary Public for the State of Texas, personally appeared _____, known to me to be the person who executed the foregoing instrument and acknowledged to me that _____ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed Notarial Seal the day and year in this certificate first above written.

Notary Public for the
State of _____
Residing at _____
My commission expires _____

TEXAS WESTMORELAND COAL CO.
EXHIBIT H

CONTRACTOR'S PARTIAL WAIVER AND RELEASE

PERIOD ENDING _____

PAYMENT ESTIMATE NO. _____

CONTRACT NO. _____

IN CONSIDERATION of and with respect to today's payment and any and all payments previously received by Contractor for the Work, Contractor does hereby waive, relinquish, surrender and release any and all liens, claims or rights of lien or claim on the above described improvements and the real property on which those improvements are located, arising under and by virtue of the laws and constitution of the State of Texas, which Company may have had or which may have accrued on and prior to the date of the Affidavit. Contractor hereby warrants and represents to Company and the Owner of said real property or improvements that it has paid, or will pay, in full all its subcontractors, suppliers and employees and hereby agrees to indemnify and hold Company and such Owner harmless from all claims of or liens filed by subcontractors, suppliers and employees of Contractor.

COMPANY: _____
BY: _____
DATE: _____

EXHIBIT X

GENERAL CONTRACT CERTIFICATE OF INSURANCE

Minimum Requirements

LIMITS OF LIABILITY IN THOUSANDS (000)

COMPANY	TYPE OF INSURANCE	POLICY NUMBER	POLICY EXPIRATION DATE		EACH OCCURRENCE	AGGREGATE
X	General Liability <input checked="" type="checkbox"/> Comprehensive Form <input type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> Explosion & Collapse Hazards <input type="checkbox"/> Underground Hazard <input type="checkbox"/> Products/Completed <input type="checkbox"/> Operations Hazard <input type="checkbox"/> Contractual Insurance <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Consultants <input type="checkbox"/> Personal Injury		or	<input type="checkbox"/> Bodily Injury <input type="checkbox"/> Property Damage <input type="checkbox"/> Bodily Injury and Property Damage Combined <input type="checkbox"/> Personal Injury	\$ 100 \$ 100 \$ 100 \$ 200	\$ 200 \$ 200 \$ 200 \$ 200
X	Automobile Injury <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-Owned		or	<input type="checkbox"/> Bodily Injury (Each Person) <input type="checkbox"/> Bodily Injury (Each Accident) <input type="checkbox"/> Property Damage <input type="checkbox"/> Bodily Injury and Property Damage Combined	\$100 \$ 200 \$ 100 \$ 200	
X	Excess Liability <input checked="" type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella Form			<input type="checkbox"/> Bodily Injury and Property Damage Combined	\$ 1,000	\$ 1,000
X	Worker's Compensation and Employer's Liability			<input type="checkbox"/> Statutory <input type="checkbox"/>		
	Other				\$ 1000 Each Accident	